

Department of State

§ 171.20

area as well as the intention and ability to disseminate the information to the public; and

(iv) The significance of the contribution to public understanding, *i.e.*, whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two factors:

(i) The existence and magnitude of a commercial interest, *i.e.*, whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, *i.e.*, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Department may refuse to consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain owed to the Department for another information access request.

(c) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for only those records.

(d) The Department's decision to refuse to waive or reduce fees may be appealed in accordance with § 171.51.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Agency* means any executive branch agency, as defined in 5 U.S.C. 105, any military department, as defined by 5 U.S.C. 102, and any other entity within the executive branch that comes into possession of classified information.

(b) *Classified information* means information that has been determined pursuant to E.O. 12958 or any predecessor order on national security information

to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(c) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(d) *Department* means the U.S. Department of State, including its field offices and Foreign Service posts abroad.

(e) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(f) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as foreign government information under the terms of a predecessor executive order.

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics that is owned by, produced by or for, or is under the control of the United States Government.

(h) *Mandatory declassification review* means the process by which specific classified information is reviewed for declassification pursuant to a request under § 171.21.

(i) *National Security* means the national defense or foreign relations of the United States.

(j) *Certain former government personnel* includes former officials of the Department of State or other U.S. Government agencies who previously have occupied policy-making positions to which they were appointed by the President under 3 U.S.C. 105(a)(2)(A) or

by the Vice President under 3 U.S.C. 106(a)(1)(A). It does not include former Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

(k) *Senior Agency Official* means the Under Secretary of State for Management.

§ 171.21 Declassification review.

(a) *Scope.* All information classified under E.O. 12958 or predecessor orders shall be subject to declassification review upon request by a member of the public or a U.S. government employee or agency with the following exceptions:

(1) Information originated by the incumbent President or, in the performance of executive duties, the incumbent Vice President; the incumbent President's White House staff or, in the performance of executive duties, the incumbent Vice President's staff; committees, commissions, or boards appointed by the incumbent President; other entities within the Executive Office of the President that solely advise and assist the incumbent President;

(2) Information that is the subject of litigation;

(3) Information that has been reviewed for declassification within the past two years; and

(4) Information exempted from search and review under the Central Intelligence Agency Information Act.

(b) *Requests.* Requests for mandatory declassification review should be addressed to the Information and Privacy Coordinator at the address given in Sec. 171.5. E-mail requests are not accepted at this time.

(c) *Mandatory declassification review and the FOIA.* A mandatory declassification review request is separate and distinct from a request for records under the FOIA. When a requester submits a request under both mandatory declassification review and the FOIA, the Department shall require the requester to elect review under one process or the other. If the requester fails to make such election, the request will be under the process that would result in the greatest disclosure unless the in-

formation requested is subject to only mandatory declassification review.

(d) *Description of information sought.* In order to be processed, a request for declassification review must describe the document or the material containing the information sought with sufficient specificity to enable the Department to locate the document or material with a reasonable amount of effort. Whenever a request does not sufficiently describe the material, the Department shall notify the requester that no further action will be taken unless additional description of the information sought is provided.

(e) *Refusal to confirm or deny existence of information.* The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of existence or nonexistence is itself classified.

(f) *Processing.* In responding to mandatory declassification review requests, the Department shall make a review determination as promptly as possible and notify the requester accordingly. When the requested information cannot be declassified in its entirety, the Department shall release all meaningful portions that can be declassified and that are not exempt from disclosure on other grounds (see § 171.25).

(g) *Other agency information.* When the Department receives a request for information in its possession that was originally classified by another agency, it shall refer the request and the pertinent information to the other agency for processing unless that agency has agreed that the Department may review such information for declassification on behalf of that agency. The Department may, after consultation with the other agency, inform the requester of the referral unless association of the other agency with the information is itself classified.

(h) *Foreign government information.* In the case of a request for material containing foreign government information, the Department, if it is also the agency that initially received the foreign government information, shall determine whether the information may be declassified and may, if appropriate,